

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151, *et seq.*), are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10.

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District

of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * *

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CHARLES ELMORE DROPLEY
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 208

NATIONAL MINERAL COMPANY,
A CORPORATION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Reply Memorandum.

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The Board's Brief in Opposition states at page 5, that at the hearing held by the Board to determine whether an investigation should be had under Section 9 (c) of the Act, petitioner stipulated:

that certain authorization cards "reflected a substantial interest on the part of" Cosmetic Union.

Actually, the stipulation was made in arguing whether petitioner was obliged to produce a list of its employees and was as follows:

Cosmetic Union "has a sufficient interest in the matter to bring the case before the Examiner" (R.A. 17, Tr. 83).

This merely recognizes the legal principle that anyone can file a suit, but cannot rationally be interpreted to be an admission of the truth of the allegations in that suit.

The statement of Board's own Examiner and attorney shows how incorrect is the Board's representation:

Q. (by Examiner): "Is the purpose of producing the list to make the type of preliminary check which the Regional Director may submit to establish sufficient interest on the part of the Union to justify the petition?"

A. (Attorney for Board): "That is the purpose. . . ." (R.A. 4, Tr. 13).

One of the important questions raised here is whether the Board can deprive petitioner of important rights of procedural due process by such devices.

There are many similar incorrections in the Board's brief. But since it was not received until September 25, 1943, instead of September 10th, petitioner will not have an opportunity to call them to the Court's attention unless the petition for certiorari is granted.

October, 1943.

Respectfully submitted,

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